

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 32

In the Matter of:

International Brotherhood of Electrical
Workers, Local 332,

Charged Party,

and

Rudolph and Sletten,

Charging Party Employer,

and

George Family Enterprises,

Involved Party Employer,

and

United Brotherhood of Carpenters and
Joiners of America, Local Union No. 405,

Involved Party.

Case No. 32-CD-198681

**CHARGING PARTY RUDOLPH
AND SLETTEN'S POST-
HEARING BRIEF**

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I. INTRODUCTION

This matter is before the National Labor Relations Board (“NLRB” or “Board”) following a hearing conducted under Section 10(k) of the National Labor Relations Act (“NLRA”) (referenced herein as the “Hearing”). The Hearing took place on June 14 and 16, 2017.

Region 32 commenced the hearing pursuant to its investigation of the unfair labor practice charge (“Charge”) filed by Charging Party Rudolph & Sletten (“R&S”) against Charged Party International Brotherhood of Electrical Workers, Local 332 (“IBEW” or “Charged Party”). The Charge reported that since on or about March 29, 2017, Charged Party International Brotherhood of Electrical Workers, Local 332 (“IBEW” or “Charged Party”), violated NLRA Section 8(b)(4)(D) by threatening to engage in, and engaging in, work stoppages with an object of forcing R&S and Involved Party Employer George Family Enterprises (“GFE”) to assign disputed work on the Apple Campus 2 construction project (“AC-2 Project”) to members of the IBEW rather than to members of the United Brotherhood of Carpenters and Joiners of America, Local Union No. 405 (“Carpenters Union”).

Since the filing of the Charge, the IBEW has continued to engage in unlawful activity in violation of NLRA Section 8(b)(4)(D), and those actions are incorporated into the instant matter as further evidence of the Charged Party’s and the electricians’ continued intent to engage in, and consistent engagement in, unlawful work stoppages and slowdowns for the purpose of acquiring the construction work on the AC-2 Project that has been assigned to members of the Carpenters Union. Without any project labor agreement or any other contractual method of resolving work jurisdiction disputes on the AC-2 Project,¹ interested parties, including Apple, Inc., the owner of the AC-2 Project jobsite, R&S, GFE, the Carpenters Union, and the carpenters, themselves, have

¹ Transcript (“Tr.”) Volume (“Vol.”) I 28:21-29:29:12 (Paul Aherne) (“Aherne”).

no means of maintaining labor peace and preventing a further escalation of unlawful activity conducted at the behest of the IBEW without the direct involvement of the NLRB.

The work jurisdiction dispute presently before the NLRB is over whether electricians represented by the IBEW should be awarded the work of installing pre-fabricated ceiling panels² into an integrated ceiling system – work which was unanimously assigned to carpenters represented by Carpenters Union on the AC-2 Project, which has been historically and consistently been assigned to carpenters, which is entirely within the specialized skillset of carpenters, and which involves no electrical work “whatsoever.”³

As explained below, the uncontradicted record provides that the installation of ceiling tiles and integrated ceiling systems has consistently, for decades, been work assigned to carpenters to perform. However, because the integrated ceiling system on the AC-2 Project includes pre-fabricated ceiling panels imbedded with light-emitting diodes (“LEDs”), CoolEdge M-13 LED plug-and-play ceiling panels (“LED ceiling panels”), which require plug-and-play work⁴ to power the ceiling tiles, the IBEW, including electricians on site and beyond, have repeatedly laid claim to that portion of the ceiling installation work. In attempts to acquire this

² The work originally in dispute included more than the installation of the LED ceiling panels – i.e., the installation of the upper portion of the Price Tech Strip and of the Richter FRP Trough, both of which had been assigned to, and initially performed on the AC-2 Project by, GFE’s union carpenters. However, after the unlawful activity engaged in by the Charged Party, several days prior to the hearing, Apple assigned the installation of the upper portion of the Price Tech Strip to IBEW electricians. For that reason, all parties involved in the present matter stipulated that there is no longer any dispute over the assignment of the installation of the upper portion of the Price Tech Strip and of the Richter FRP Trough: the former, as stipulated by the parties, has been assigned by the owner to IBEW electricians; and the latter, as stipulated by the parties, has been assigned to the GFE union carpenters. (Tr. Vol. I 7:20-8:13.) Because the only work in dispute is the installation of the LED ceiling panels on the AC-2 Project, that installation work is the only work that is presently sought for assignment in his Hearing.

³ Tr. Vol. I 50:2-4 (Larry George (“George”)) (“Q. So does the installation of these panels involve any electrical work? A. None whatsoever.”).

⁴ As explained by Laurence (“Larry”) George, the CEO President of GFE and an individual with 40 years of carpentry experience, “plug and play work,” including that required for the LED ceiling panels at issue, is “no more different than plugging in a lamp into the wall.” (Tr. Vol. I 39:22-40:5 (George).) *See also* Tr. Vol. I 76:25-:77:7 (George) (“[I]t was Plug and Play, which means that, you know, we weren’t stripping any wires. We weren’t doing anything other than plugging one panel into the next panel. And after that panel is plugged in, just like plugging a lamp on your table, you plug it into the wall or you . . . plug it into a phone jack . . .”).

work, the IBEW has threatened to, and have, engaged in walk-offs from the AC-2 Project on at least two separate occasions as well as slowdowns of work, among other antagonistic, “wobble”⁵ activities for the purpose of acquiring this work. The Industrial Workers of the World defines a “wobble” as a term used in the construction trades to describe a “walk out, slow down, or [to leave the worksite and] go to the boss for a ‘chat’ during work time.”⁶

At the heart of the present dispute is IBEW’s proclivity to engage in unlawful activity for the sole purpose of obtaining work which does not belong to it and has not been assigned to it – work that members of the Carpenters Union have been performing consistently, efficiently, and successfully for decades. The uncontradicted witness accounts at the Hearing reveal that only carpenters have the requisite expertise and training to perform the installation of LED ceiling panels, installation work which is fraught with serious financial risk if not handled with the standard of care which only skilled carpenters can provide. R&S, GFE, and Apple have all expressed their preference to have carpenters perform the installation of the integrated ceiling system, including the installation of the LED ceiling panels, on the AC-2 jobsite, for multiple reasons, including efficiency, the level of detail and skillset of the carpenters, the dictates of past practice of both R&S and the construction industry, and to maintain R&S’s and GFE’s continued and positive relationship with the Carpenters Union.

Moreover, as R&S is signatory to the Carpenters Master Agreement for Northern California (“CMANC”),⁷ had R&S *not* subcontracted the disputed work to a subcontractor that is signatory to a collective bargaining agreement with the Carpenters Union, such as GFE, R&S would have opened itself to a grievance for violating the subcontracting provisions of the

⁵ A “wobble” is a term that is used particularly amongst members of the building trades to describe wildcat actions, slowdowns, and strikes. (Tr. Vol. I 196:13-16 (Jay Bradshaw) (“Bradshaw”).)

⁶ See “*Wobble is a Verb*,” https://www.iww.org/about/official/think_it_over.

⁷ See Charging Party (“CP”) Exhibit (“Exh.”) 1; Tr. Vol. I 14:10-14.

CMANC.⁸ In contrast, neither R&S nor GFE have any collective bargaining relationship with the IBEW and thereby do not risk violating any pre-existing agreement with the electricians by maintaining the status quo with respect to the LED ceiling panel installation. Accordingly, the electricians' ongoing and repeated unlawful activity strikes squarely against the Board's stated purposes of maintaining labor peace and stability, as the IBEW's activity intended to disrupt the positive collective bargaining relationship between neutral employers, such as R&S and GFE, with both the Carpenters Union and its members, who have been trained specifically to perform the very work which is in dispute and which the electricians, as explained below, have a short history of performing poorly.

In light of the fact that there are repeated incidents of unlawful activity perpetrated by the IBEW which span beyond the AC-2 Project, R&S respectfully requests that the Board's award be applicable to all of R&S's and GFE's projects in the future. Issuing an award limited to the AC-2 Project, particularly after the IBEW has been rewarded for its unlawful activities with additional assignments of work, would not serve the NLRB's interest in harmonious labor relations and would merely provide the IBEW with further ammunition in its ongoing and deliberate campaign to acquire work that has historically and adeptly been assigned to members of the Carpenters Union. To wit, counsel for the Carpenters Union expressed, on the record, that if no violation of NLRA Section 8(b)(4)(D) is found in this case, it would have no reason not to engage in the same behavior in the future at other construction projects.⁹

II. FACTUAL BACKGROUND

A. The Apple Campus 2 Project.

Apple's AC-2 Project is intended to build a research and development campus for its

⁸ Tr. Vol. I 29:16-30:9 (Aherne); Tr. Vol. I 27:10-16 (Aherne); CP Exh. 1 §§ 4, 50.

⁹ Tr. Vol. I 276:6-12 (Matt Gauger).

employees on a 175-acre site in Cupertino California.¹⁰ The main building, as depicted in Exhibit B the Construction Agreement Between Apple Inc. and Rudolph & Sletten, Inc. (“Construction Agreement”), once fully-constructed, will be able to accommodate up to 12,000 employees and cover approximately 2.8 million square feet in four stories.¹¹ Akin to the name of the street on which Apple has its principal place of business, 1 Infinite Loop, the main building is going to be a perfectly-circular-shaped building with nine entrances, each separated by office spaces, and the building will have a mile-long diameter.¹²

There are three general contractors working on the AC-2 Project: (1) R&S, which is responsible for all improvements in the interior of the building; (2) Holder Construction (“Holder”), which is responsible for the core shell construction of the building; and (3) Truebeck, formerly known as BN Builders, which is responsible for all site work as well as some of the ancillary buildings.¹³ The geographic footprints of the general contractors often overlap.¹⁴ Apple had originally contracted with DPR Skanska to perform the construction work presently being performed by both R&S and Holder, but ultimately, Apple terminated its contract with DPR Skanska and split its previously-assigned work to both R&S and Holder.¹⁵

B. The Interested Parties.

1. Rudolph & Sletten Is An Employer In An Industry Affecting Commerce.

R&S, a general building contractor, is a California corporation and is a subsidiary of Tutor Perini Corporation, a Massachusetts corporation.¹⁶ R&S is headquartered at 1600 Seaport

¹⁰ See CP Exh. 2, p. 1, ¶¶ A, B; Tr. Vol. I 15:25 (Aherne).

¹¹ See CP Exh. 2, Exhibit B, p. 2.

¹² Tr. Vol. I 209:8-13 (Kurt Lewis) (“Lewis”); Tr. Vol. I 15:16-22 (Aherne).

¹³ Tr. Vol. I 16:4-23 (Aherne).

¹⁴ Tr. Vol. I 16:7-23 (Aherne).

¹⁵ Tr. Vol. I 17:8-20 (Aherne).

¹⁶ Tr. Vol. I 30:14-25 (Aherne); Tr. Vol. I 12:2-4 (Aherne).

Boulevard, Suite 350, Redwood City, California, and conducts business primarily in California.¹⁷ R&S received \$1.4 billion in revenues in the 2016 fiscal year and purchased well in excess of \$50,000 worth of goods and materials from outside of California for delivery into California.¹⁸ Accordingly, the NLRB has jurisdiction over R&S and the instant dispute.

R&S signed the Construction Agreement with Apple on June 15, 2015, and began construction on the AC-2 Project in about that same month.¹⁹ R&S employs approximately 600 employees, many of whom are represented by different labor organizations.²⁰ None of R&S's employees work as electricians on the AC-2 Project, and R&S has no contractual relationship with any of the electrical subcontractors on the AC-2 Project.²¹ R&S is signatory to the CMANC and has no collective bargaining relationship with the IBEW.²² R&S has been signatory to the CMANC for as long as it has been in business – i.e., approximately 57 years.²³ R&S also has a very good, longstanding relationship with the Carpenters Union, and it considers the Carpenters Union to be its “partner.”²⁴

2. George Family Enterprises Is Also An Employer In An Industry Affecting Commerce.

GFE, a general interior contractor and specialty subcontractor, is headquartered in 32 Leveroni Court, Novato, CA.²⁵ It carries two California contractor's licenses: a B (General Building Contractor) license; and a C-2 (Insulation and Acoustical Contractor) license.²⁶ In the course of its business, GFE annually purchases and receives goods that are valued in excess of

¹⁷ Tr. Vol. I 11:16-20 (Aherne); Tr. Vol. I 12:5-7 (Aherne).

¹⁸ Tr. Vol. I 12:8-24 (Aherne).

¹⁹ Tr. Vol. I 18:11-13 (Aherne); Tr. Vol. I 17:3-16 (Aherne).

²⁰ Tr. Vol. I 12:25-13:5 (Aherne).

²¹ Tr. Vol. I 22:2-5 (Aherne).

²² Tr. Vol. I 13:10-14 (Aherne); Tr. Vol. I 14:19-24 (Aherne).

²³ Tr. Vol. I 14:10-14 (Aherne).

²⁴ Tr. Vol. I 14:15-18 (Aherne).

²⁵ Tr. Vol. I 33:9-10 (George); Tr. Vol. I 33:22-24 (George).

²⁶ Tr. Vol. I 33:23-34:5 (George).

\$50,000 directly from points outside of California.²⁷ For this reason, the NLRB has further cause to maintain jurisdiction over this matter.²⁸

GFE exclusively employs carpenters affiliated with the Carpenters Union to perform all of its construction work.²⁹ GFE specializes in constructing fabric wall systems, such as T-bar ceilings, stretch ceiling systems with finishes that function acoustically, aesthetically, and for lighting purposes, as well as luminous ceilings which have lighting sources behind them, such as fluorescent lights.³⁰

After submitting a bid to R&S, R&S accepted GFE's bid to perform the following scope of work: installation of anchors, clips, and Unistrut framing necessary for the attachment of the owner-furnished integrated Richter ceiling systems; and installation of the integrated Richter ceiling systems, LED ceiling panels, insulation, and tech strips.³¹ In December, 2015, R&S and GFE executed a Subcontract Agreement, which memorializes the assignment of the following installation work to GFE: the installation of the stretched fabric, Richter ceiling system; the installation of the technical strips; and the installation of the LED ceiling panels.³²

GFE employs approximately 15 carpenters who are presently working on the AC-2 Project, although that number may fluctuate depending on the day.³³ GFE began performing construction work on the AC-2 Project around February, 2016, including the installation of the integrated Richter ceiling systems and the installation of the tech strips, and it has continued to

²⁷ Tr. Vol. I 33:17-21 (George).

²⁸ Newmat Norcal Company, affiliated with GFE and occupying the same headquarters as GFE, is a company that performs construction work exclusively outside of California, whereas GFE performs all of the construction work inside of California. (Tr. Vol. I 73:7-74:4 (George); Tr. Vol. I 74:6-10 (George).) On an annual basis, Newmat Norcal similarly makes purchases and receives goods from out of California that are valued at greater than \$50,000. (Tr. Vol. I 74:11-14 (George).) GFE is the primary business involved in the present matter, as it takes place in Cupertino, California, but Newmat Norcal's construction experience is relevant to the extent that it demonstrates industry practice and employer preference with respect to the work in dispute.

²⁹ Tr. Vol. I 34:19-21 (George); Tr. Vol. I 132:10-11 (Adam Dodds) ("Dodds").

³⁰ Tr. Vol. I 6-18 (George).

³¹ See CP. Exh. 3, p. 6; Tr. Vol. I 43:19-44:9 (George); Tr. Vol. I 36:7-15 (George); Tr. Vol. I 20:4-15 (Aherne).

³² See CP Exh. 5, p. 3 § F; Tr. Vol. I 37:13-18 (George); Tr. Vol. I 38:20-39:1 (George).

³³ Tr. Vol. I 38:13-19 (George); Tr. Vol. I 132:15-17 (Dodds).

perform construction work on the site since that time.³⁴ GFE has been ready and willing to install the LED ceiling panels, but because electrical subcontractors signatory to the IBEW collective bargaining agreement are months behind schedule, GFE has been unable to install any of the one mockup.³⁵

3. International Brotherhood of Electrical Workers, Local 332, Is A Section 2(5) Labor Organization.

The IBEW opted not to participate in the Hearing except to stipulate to what work remained in dispute.³⁶ Hearing Officer Criss Parker provided the IBEW representatives, including Christopher Platten, counsel for the IBEW, Gerald Pfeiffer, Business Manager for the IBEW, Pete Reyes, Business Representative for the IBEW, and one other individual, understood to be another Business Agent for the IBEW, with an opportunity to make any statements into the record but opted not to do so and left the hearing at that time.³⁷ By failing to raise objections to any of the testimony raised at the hearing, the IBEW waived its right to do so and all testimony that received no objection must be considered to be of probative value.³⁸

Although the IBEW refused to provide any testimony and stipulate that it is a “labor organization” under the NLRA Section 2(5), Charging Party asks that the NLRB take judicial

³⁴ Tr. Vol. I 36:22-24 (George); Tr. Vol. I 35:24-36:1 (George); Tr. Vol. I 93:7-16 (George); Tr. Vol. I 139:2-11 (Dodds).

³⁵ Tr. Vol. I 39:12-21 (George); Tr. Vol. I 40:12-17 (George); Tr. Vol. I 40:22-25 (George); Tr. Vol. I 232:6-12 (Lewis).

³⁶ Tr. Vol. I 9:5-14 (Christopher Platten).

³⁷ Tr. Vol. I 143:3-10 (Hearing Officer Criss Parker); Tr. Vol. I 110:21-23 (Rick Solis) (“Solis”); Tr. Vol. I 147:25-148:2 (Solis).

³⁸ Particularly with respect to hearsay testimony, because no objections were raised at the hearing on the basis of hearsay, any testimony that would ordinarily fall within the scope of the objection is admissible and can be of probative value. *See Brady-Hamilton Stevedore Company* (1972) 198 NLRB 147, n. 5 (“Unobjected to hearsay is admissible and of probative value”); *accord N.L.R.B. v. Int’l Union of Operating Engineers, Local Union No. 12* (9th Cir. 1969) 413 F.2d 705, 707 (“There was no objection to this hearsay testimony. ‘Hearsay, even at common law, if unobjected to when offered, can be of probative value, and certainly occupies a similar position in an administrative hearing such as this.’ . . . Unobjected to hearsay is admissible and of probative value in the district courts.”); *accord Conley v. N.L.R.B.* (6th Cir. 2008) 520 F.3d 629, 635 (“[B]ecause ‘hearsay evidence is admissible [at Board proceedings] if ‘rationally probative in force and if corroborated by something more than the slightest amount of other evidence,’ the administrative law judge determined that the affidavits should be admitted as substantive evidence to be evaluated and weighed in the same manner as other non-hearsay testimony.”).

notice of two reliable sources which demonstrate that the IBEW is a “labor organization,” as that term is defined in the NLRA: (i) Local 332 of the IBEW’s website,³⁹ which includes a link to a document titled, “History of the IBEW,”⁴⁰ which provides that the union “assist[s] local union with membership development (including organizing), collective bargaining, and contract administration”; and (2) numerous NLRB decisions involving IBEW, Local 332, which have found it to be a “labor organization within the meaning of the NLRA.”⁴¹ These facts and sources demonstrate that the IBEW, Local 332, is a “labor organization” as defined under Section 2(5) of the NLRA.

4. Holder Construction.

Holder is the general contractor which has contractual relationships with all of the electrical subcontractors on the AC-2 Project.⁴² There are at least seven different electrical subcontractors working for Holder on the AC-2 Project: (1) RE2, a joint venture between Rosendin Electric and Redwood Electric Group⁴³; (2) CH Reynolds⁴⁴; (3) Morrow-Meadows Corporation⁴⁵; (4) Young Electric⁴⁶; (5) Sprig Electric⁴⁷; (6) Cupertino Electric⁴⁸; and (7) Prime Electric.⁴⁹ There are between 700 and 900 electricians employed by the electrical contractors on the AC-2 Project.⁵⁰ Pfeiffer reported there to be 900 electricians on the AC-2 Project.⁵¹

As explained by several witnesses, electricians on the AC-2 Project are easily

³⁹ See www.IBEW332.org.

⁴⁰ See http://www.ibew332.org/index.cfm?zone=/unionactive/view_page.cfm&page=IBEW20History.

⁴¹ See, e.g., *W.S.B. Electric, Inc.* (1984) 269 NLRB 417; see also, e.g., *Leland Stanford Jr. University* (1972) 194 NLRB 1210.

⁴² Tr. Vol. I 22:16-19 (Aherne).

⁴³ See CP Exh. 15; Tr. Vol. I 22:24-23:12 (Aherne).

⁴⁴ Tr. Vol. I 22:24-23:12 (Aherne).

⁴⁵ Tr. Vol. I 22:24-23:12 (Aherne).

⁴⁶ Tr. Vol. I 141:18-142:4 (Dodds).

⁴⁷ Tr. Vol. I 141:18-142:4 (Dodds).

⁴⁸ Tr. Vol. I 141:18-142:4 (Dodds).

⁴⁹ Tr. Vol. I 211:1-8 (Lewis).

⁵⁰ Tr. Vol. I 211:9-17 (Lewis); Tr. Vol. I 141:15-17 (Dodds).

⁵¹ CP. Exh. 9; Tr. Vol. I 118:8-16 (Solis).

identifiable,⁵² particularly those working for RE2, because: (i) of the type of work that they are performing (e.g., wire stripping work)⁵³; (ii) of the materials on which they are working (e.g., on a light or fire strobe)⁵⁴; (iii) of their “electrician’s pouch,” which is a pouch that is made to carry electricians’ tools⁵⁵; (iv) of the type of tools that electricians carry (e.g., wire-stripping tools, conduit cutters, and flex cutters), which will typically be on their person⁵⁶; (v) RE2 electricians wear company-identifying clothing, such as safety vests with company logos on the back of them⁵⁷; and (vi) RE2 electricians wear company-identifying hard hats with IBEW and other electrical-related stickers on them.⁵⁸ Because of how easily identifiable they are, electricians can be seen working on the AC-2 Project on every typical workday. For example, based on his frequent presence at the AC-2 Project for the past 15 months, on a typical day, Kurt Lewis, the Assistant Superintendent⁵⁹ employed by Rudolph & Sletten at the AC-2 Project, will see approximately 200 electricians on the AC-2 Project jobsite.⁶⁰ Adam Dodds, a Quality Control Manager and Project Manager at GFE, who is responsible for overseeing GFE’s work on the AC-2 Project five days each week, will see anywhere from 200 to 300 electricians on the AC-2 Project jobsite in a typical day.⁶¹ Additionally, John Elwood, a Senior Project Executive at R&S, who oversees all of the work that R&S performs at the AC-2 campus, will typically see between 50 and 100 electricians each day he visits the AC-2 Project jobsite.⁶²

⁵² Tr. Vol. I 224:16-17 (Lewis).

⁵³ Tr. Vol. I 222:22-225:20 (Lewis).

⁵⁴ Tr. Vol. I 222:22-225:20 (Lewis).

⁵⁵ Tr. Vol. I 222:22-225:20 (Lewis).

⁵⁶ Tr. Vol. I 222:22-225:20 (Lewis).

⁵⁷ Tr. Vol. I 126:5-127:4 (Solis).

⁵⁸ Tr. Vol. I 222:22-225:20 (Lewis).

⁵⁹ As an Assistant Superintendent, Lewis oversees the installation work being performed, from floor to ceiling, at the each one of the nine entrances to the AC-2 Project. (Tr. Vol. I 209:8-201:5 (Lewis); Tr. Vol. I 210:18-20 (Lewis).)

⁶⁰ Tr. Vol. I 226:16-22 (Lewis).

⁶¹ Tr. Vol. I 155:6-12 (Dodds); Tr. Vol. I 131:7-132:4 (Dodds); Tr. Vol. I 132:2-6 (Dodds).

⁶² Tr. Vol. I 267:23-268:13 (Elwood); Tr. Vol. I 248:17-23 (Elwood).

C. Description Of The Work In Dispute.

The specific work in dispute, the installation of the LED ceiling panels at the AC-2 Project, is just one part of the installation of a single, integrated ceiling system manufactured by Richter.⁶³ Installing LED ceiling panels is analogous to installing acoustical ceiling panels into a standard, integrated ceiling system – it is merely one part of a cohesive whole. The specific LED ceiling panels being installed at the AC-2 Project, the CoolEdge M-13 LED plug-and-play ceiling panels (“LED ceiling panels”), have been specifically created by CoolEdge – in collaboration with Richter – to be compatible with the Richter ceiling system.⁶⁴ Provided the foregoing, and in order to better explain both the work in dispute and the effect of the slowdown of work initiated by IBEW electricians, this Brief will also explain the installation work that is antecedent to the installation of the LED ceiling panels.

1. The Preliminary Construction Work Prior To Installation Of The LED Ceiling Panels.⁶⁵

To begin the process of installing the integrated Richter ceiling system, carpenters will anchor a Unistrut metal frame (“Unistrut”) to the concrete ceiling with concrete quick-bolt inserts.⁶⁶ The Unistrut enables the carpenters to suspend the integrated Richter ceiling system from the concrete ceiling.⁶⁷

Once the Unistrut is installed, carpenters install the vertical, threaded rods into the Unistrut to act as the suspension for the integrated Richter ceiling system.⁶⁸ The threaded rod is then attached to a rod coupler, a structural framing member, which becomes the direct supporting

⁶³ Tr. Vol. I 66:20-21 (George); Tr. Vol. I 132:18-133:2 (Dodds); Tr. Vol. I 25:6-8 (Aherne).

⁶⁴ Tr. Vol. I 63:13-21 (George).

⁶⁵ Involved Party (“IP”) Exh. 1 provides a helpful diagram to illustrate the integrated Richter ceiling system.

⁶⁶ Tr. Vol. I 45:2-46:11 (George); IP Exh. 1.

⁶⁷ Tr. Vol. I 45:2-15 (George); IP Exh. 1.

⁶⁸ Tr. Vol. I 47:10-48:6 (George); IP Exh. 1.

attachment for the integrated Richter ceiling system.⁶⁹

From the rod coupler, the carpenters will begin to install the first part of the integrated Richter ceiling system: the metal frame, also known as the “bones,” of the ceiling system.⁷⁰ Then, an aluminum frame system made of pre-finished aluminum is attached around the perimeter of the “bones” by carpenters.⁷¹ After the frame system has been attached, a sub-structural frame will be attached to the “bones” of the integrated Richter ceiling system, and this sub-structural frame – also installed by carpenters – is specifically designed to interface directly with the LED ceiling panels and other acoustical ceiling panels.⁷²

During the foregoing installation process, in order for the installation of the LED ceiling panels to commence, the IBEW electricians at the AC-2 Project – who are employed by RE2 – must complete the following work: (1) install drivers – i.e., the main power source which converts alternating current (“AC”) to direct current (“DC”) power; (2) install the step-down converters, which decrease the power supply to 12 volts; (3) run “home-run” cables through the building and, specifically, the integrated Richter ceiling systems; and then (4) install the “t-cables” with “pigtaills” – depicted in the right hand of Larry George in Charging Party Exhibit 12 and depicted lying on top of the CoolEdge M13 LED plug-and-play panel in Charging Party Exhibits 10 and 11 – which are a critical part of the plug-and-play work that is required to power the LED ceiling panels, as illustrated in Charging Party Exhibit 14.⁷³ In short, in order to install the LED ceiling panels into the integrated Richter ceiling system, the low-voltage power through the t-cables with pigtaills must be installed into the ceiling by the IBEW electricians.⁷⁴

⁶⁹ Tr. Vol. I 47:10-48:6 (George); IP Exh. 1.

⁷⁰ Tr. Vol. I 106:5-8 (George); IP Exh. 1.

⁷¹ Tr. Vol. I 106:5-8 (George).

⁷² Tr. Vol. I 46:18-47:9 (George).

⁷³ Tr. Vol. I 139:23-140:15 (Dodds).

⁷⁴ Tr. Vol. I 39:22-40:5 (George).

Once each one of the foregoing steps has been completed, the LED ceiling panels may be installed directly into the integrated Richter ceiling system.⁷⁵

2. CoolEdge M-13 LED Plug-And-Play Ceiling Panels Are Low-Voltage Light Panels And Run With Safe, Direct Current.

The LED ceiling panels at issue are rectangular, thin ceiling panels which have two sides: the side which faces the ground and from which light emits is the “white side” of the LED panel.⁷⁶ This side of the panel is depicted facing up in Charging Party Exhibits 10, 11, and 12. There are multiple light diodes spread across the face of the LED ceiling panel.⁷⁷ The other side of the LED ceiling panel is the part of the panel that is attached to the sub-structural framing and is attached by screws into the sub-structural framing to become a part of the integrated Richter ceiling system.⁷⁸

The LED ceiling panels are low-voltage panels, using anywhere from six to 12 volts.⁷⁹ The panels run with DC current, which is a significantly safer current to work with in comparison to working with AC current.⁸⁰ AC current can cause electric shocks and create fires; DC current is the equivalent of handling a battery – it is very safe and cannot cause injury or harm to any person or structure.⁸¹ While working with AC current requires wiring work, as they are high risk if not done properly, any person can handle work involving DC current.⁸²

Provided that the LED ceiling panels are both low-voltage and run with DC current, there is no requirement that a person installing those ceiling panels be a licensed electrician.⁸³ The only requirement for the installation work is that the contractor be licensed to perform

⁷⁵ Tr. Vol. I 39:22-40:5 (George).

⁷⁶ Tr. Vol. I 51:15-22 (George).

⁷⁷ Tr. Vol. I 51:23-52:3 (George).

⁷⁸ Tr. Vol. I 52:5-13 (George).

⁷⁹ Tr. Vol. I 41:12-22 (George).

⁸⁰ Tr. Vol. I 41:20-42:10 (George).

⁸¹ Tr. Vol. I 41:20-42:10 (George).

⁸² Tr. Vol. I 42:11-19 (George); Tr. Vol. I 42:20-43:1 (George).

⁸³ Tr. Vol. I 43:2-9 (George).

construction work in California, as GFE presently is licensed to do.⁸⁴

These LED ceiling panels are a relatively new introduction to the construction industry, as they are only about two years old.⁸⁵ The only novel feature of these ceiling panels is that they come pre-fabricated with imbedded LED lights.⁸⁶ These ceiling panels are therefore very similar to the ceiling panels which carpenters have been installing for over the past decades, except the installation requires plugging in the ceiling panels to the “pigtails,” as demonstrated in Charging Party Exhibit 14, in a seconds-long process referred to as “plug-and-play work.”

3. The Process Of Installing The LED Ceiling Panels Involves No Electrical Work Whatsoever.

The first step required to install the LED ceiling panels is to unpackage and unwrap the panels from their boxes and fabric wrapping.⁸⁷ Because people are susceptible to carrying static electricity, extreme care is required when handling the LED ceiling panels.⁸⁸ If the LED panel is put into contact with static electricity or any perspiration whatsoever (e.g., by the touch of a finger), it can cause the LED panel to fail entirely or it will noticeably shorten the lifespan of the LEDs imbedded in the panel.⁸⁹

Once unwrapped and unpackaged, in order to install the LED ceiling panels into the integrated Richter ceiling frame, one would need to screw the LED ceiling panels to the sub-structural frame with the use of a brake-shaped aluminum bracket, which is depicted in the left hand of Larry George in Charging Party Exhibit 13.⁹⁰ Once the bracket is screwed into the Richter ceiling system, then pins must be twisted into place in order to lock the LED panels into

⁸⁴ Tr. Vol. I 43:2-9 (George).

⁸⁵ Tr. Vol. I 8-19 (George); Tr. Vol. I 186:11-23 (Frank Nunes) (“Nunes”).

⁸⁶ Tr. Vol. I 8-19 (George); Tr. Vol. I 186:11-23 (Nunes); Tr. Vol. I 25:19-24 (Aherne).

⁸⁷ Tr. Vol. I 49:2-19 (George).

⁸⁸ Tr. Vol. I 49:2-19 (George).

⁸⁹ Tr. Vol. I 49:2-19 (George).

⁹⁰ Tr. Vol. I 49:20-1 (George); Tr. Vol. I 55:18-56:5 (George).

integrated Richter ceiling system.⁹¹

The last step with respect to the installation of the LED ceiling panels is the “plug-and-play” work, which is the work necessary to provide power to the diodes imbedded in the ceiling panels.⁹² This seconds-long process is illustrated in a videotape recorded during the testimony of Larry George in the Hearing in Charging Party Exhibit 14. To supply the LED ceiling panels with DC power, the metal button ends of the two-pronged electrical wires, known as “pigtailed,” which would needed to be installed by electricians, are snapped into the metal button-like receivers on the face of the LED ceiling panel.⁹³ The act of snapping the “pigtailed” into the face of the LED ceiling panel is “no different than the snap that you would use for plugging a 9-volt battery into your smoke detector,” or “plugging in a lamp into the wall,” which is why it is called “plug-and-play” work.⁹⁴

As explained by Larry George, the CEO and President⁹⁵ of GFE with 40 years of experience in the construction industry and who worked as a carpenter for 10 years,⁹⁶ the installation of the LED ceiling panels accordingly involves no electrical work whatsoever.⁹⁷

4. The Last Step Of Installing The Integrated Richter Ceiling System Involves Creating A Sealed Plenum.

Once the LED ceiling panels and remaining acoustical ceiling panels have been installed, the last step of the installation of the integrated Richter ceiling system is to install two layers of translucent fabric to the perimeter of the frame in order to create a sealed plenum – i.e., a space

⁹¹ Tr. Vol. I 49:20-1 (George).

⁹² Tr. Vol. I 57:7-10 (George); Tr. Vol. I 39:22-40:5 (George).

⁹³ Tr. Vol. I 50:14-24 (George); CP Exh. 14; Tr. Vol. I 52:19-53:4 (George); *see also* CP Exh. 4 (“The owner provided CoolEdge LED systems is “plug_and_play,” with all DC low voltage wires having *pre-installed* “button snap” connectors by the manufacturer.”).

⁹⁴ Tr. Vol. I 52:19-53:2 (George); Tr. Vol. I 39:22-40:5 (George).

⁹⁵ As CEO and President of GFE, George is responsible for all financial matters of the corporation, planning for the future, new products, and overseeing project management. (Tr. Vol. I 33:13-17 (George).)

⁹⁶ Tr. Vol. I 32:20-25 (George); Tr. Vol. I 33:3-5 (George); Tr. Vol. I 34:22-35:2 (George); Tr. Vol. I 96:18-25 (George); Tr. Vol. I 35:3-14 (George).

⁹⁷ Tr. Vol. I 50:2-4 (George).

where air and light cannot enter or exit.⁹⁸ The “plenum” is the air space between the diodes – i.e., light emitters – of the LED panel and the finished, translucent membrane that sits underneath those diodes.⁹⁹ The purpose of the membrane is two-fold: to avoid having dust, debris, and insects enter the plenum and negatively impact the longevity of the ultra-sensitive diodes imbedded into the LED ceiling panel¹⁰⁰; and to diffuse the light that is coming through the individual diodes in order to smooth out the illumination equally over the fabric such that someone looking up at the lights cannot see any of the individual diodes that are emitting light to the ground.¹⁰¹

D. There Is No Agreed-Upon Method For Resolving Jurisdictional Disputed On The AC-2 Project.

During the Hearing, Paul Aherne, who has served as the Senior Vice President and General Counsel for R&S over the past 17 years,¹⁰² confirmed that there are no project labor agreements or any other agreements which provide for any dispute resolution process through which work jurisdiction disputes that arise on the AC-2 Project can be resolved.¹⁰³ Had one existed, Aherne confirmed that he would have utilized it to resolve the instant matter.¹⁰⁴

E. There Are Competing Claims Over The Work Of Installing The LED Ceiling Panels At The AC-2 Project.

1. The Installation Of The LED Ceiling Panels Has Been Assigned To GFE And Members Of The Carpenters Union, Both Of Whom Have Consistently Expressed Their Intention To Retain The Work.

In Section F of Exhibit A of the Subcontract Agreement, R&S assigned the installation of

⁹⁸ Tr. Vol. I 46:18-47:9 (George).

⁹⁹ Tr. Vol. I 48:7-13 (George).

¹⁰⁰ Tr. Vol. I 47:1-9 (George); Tr. Vol. I 58:2-7 (George).

¹⁰¹ Tr. Vol. I 48:7-19 (George).

¹⁰² In this role, Aherne oversees all legal matters pertaining to the business’s operations and is responsible for the review and negotiation of all contracts, interface with subcontractors, and legal issues which arise during the construction process. (Tr. Vol. I 11:5-11 (Aherne).)

¹⁰³ Tr. Vol. I 28:21-29:12 (Aherne).

¹⁰⁴ Tr. Vol. I 28:21-29:12 (Aherne).

the LED ceiling panels directly to GFE, a business which exclusively employs union carpenters.¹⁰⁵ In turn, GFE assigned all of the installation work, including the installation of the LED ceiling panels, to the union carpenters.¹⁰⁶ Specifically, in a letter of assignment, Larry George wrote that GFE “assigns the work described above [i.e., “Install low voltage Cool[E]dge LED panels into the owner supplied custom ceiling system at all entry walkways”] to the [C]arpenters Union and their members per past practice.”¹⁰⁷

In direct response to challenges by the IBEW over whether this installation work has been properly assigned to members of the Carpenters Union, both representatives of GFE and of the Carpenters Union have consistently maintained that the installation of the LED ceiling panels is carpenter work. For example, during a meeting with the IBEW which will be addressed further below, Rick Solis, a Senior Field Representative¹⁰⁸ of the Carpenters Union,¹⁰⁹ responded that the Carpenters Union would not agree to a composite crew in order to allow IBEW electricians to perform any part of the disputed installation work.¹¹⁰ Additionally, Dodds, who attended a coordination meeting in March, 2017, which is also addressed further below, in response to IBEW representatives’ claims that the disputed work should be performed by IBEW electricians, Dodds responded, “Absolutely not. I’m not agreeing to that.”¹¹¹ There is no evidence on the record which would tend to show, at any time during this dispute, that either GFE or the Carpenters Union agreed to relinquish any part of the work in dispute.

¹⁰⁵ CP. Exh. 5; Tr. Vol. I 34:19-21 (George); Tr. Vol. I 132:10-11 (Dodds).

¹⁰⁶ Tr. Vol. I 58:21-23 (George).

¹⁰⁷ CP. Exh. 8.

¹⁰⁸ In this role, Solis is responsible for overseeing a staff of six Field Representatives/Business Agents employed by the Carpenters Union which monitor both Santa Clara and San Bonito Counties, where the AC-2 Project is located. Tr. Vol. I 108:12-21 (Solis). In this role, Solis visits the AC-2 Project between one and five times each week. (Tr. Vol. I 108:22-25 (Solis).

¹⁰⁹ Tr. Vol. I 108:6-10 (Solis).

¹¹⁰ Tr. Vol. I 114:23-115:8 (Solis).

¹¹¹ Tr. Vol. I 151:6-13 (Dodds).

2. The IBEW And Its Agents Repeatedly Demanded To Perform The Disputed Installation Work Assigned To Carpenters And Demanded That The Carpenters Stop Performing That Same Work.

Between the time of March and May, 2017, the IBEW repeatedly demanded that carpenters stop performing the disputed installation work and that the disputed work – including the installation of work already assigned to the Carpenters Union and GFE, such as the installation of the LED ceiling panels as well as the installation of the tech strips – be assigned to the IBEW.¹¹² Below are some examples of what has occurred on the AC-2 Project:

a. The March 22 Coordination Meeting.

On March 22, 2017, at a coordination meeting setup by Holder’s Superintendent, Jeff Kegley, IBEW representatives demanded that they should have been, and should be, assigned the installation of the tech strips over members of the Carpenters Union.¹¹³ The following people attended that meeting, among others: Dodds; Kegley; and representatives of the IBEW, including Reyes and Frank Virgil, who had introduced themselves to Dodds as IBEW representatives.¹¹⁴ Elwood had arrived towards the end of that meeting.¹¹⁵

It came as a surprise to Dodds both (a) that he had not been invited to attend the coordination meeting, as he had been calling for this meeting for some time to go over the installation sequence with the other contractors, and (b) that IBEW representatives attended the meeting, because coordination meetings are typically friendly meetings between contractors to help the subcontractors outline the best sequence of the work to be performed on site.¹¹⁶ Once the meeting began to discuss the sequencing of construction work, Reyes – with respect to the

¹¹² Tr. Vol. I 159:21-25 (Dodds.)

¹¹³ Tr. Vol. I 143:10-143:24 (Dodds).

¹¹⁴ Tr. Vol. I 143:17-145:11 (Dodds).

¹¹⁵ Tr. Vol. I 252:6-13 (John Elwood) (“Elwood”).

¹¹⁶ Tr. Vol. I 143:21-145:8 (Dodds); Tr. Vol. I 143:17-145:11 (Dodds); Tr. Vol. I 147:5-23 (Dodds).

installation of the tech strips¹¹⁷ – said, “We’re here to dispute this work. We feel this is our work.”¹¹⁸ Reyes added, “We [i.e., the IBEW] see the tech strips as our scope of work.”¹¹⁹ Then, towards the end of the meeting, Reyes said, “Can we all just agree here that this should be my [i.e., IBEW’s] scope of work?”¹²⁰ Dodds responded, “Absolutely not. I’m not agreeing to that. And I want carpenter representation here the next time we do a meeting like this.”¹²¹

b. Meeting Between The IBEW And GFE After The March 22 Coordination Meeting.

Shortly after this coordination meeting, Lewis met with the same IBEW representatives who had attended that meeting, including Reyes, as well as Dodds, Elwood, and Brent Virgil, a Superintendent of RE2.¹²² During this follow-up meeting, the IBEW representatives again said that the work being performed by members of the carpenters union should be re-assigned to the IBEW electricians.¹²³

c. IBEW Taking Away Apple’s LED Ceiling Panels “In Anticipation Of Getting That Work Assigned To Them.”

On or around March 22, 2017, electricians wearing RE2 vests used a forklift in GFE’s staging area to take LED ceiling panels away from the carpenters and GFE.¹²⁴ Upon being confronted at the GFE staging area by GFE employees, the electricians referred to the LED ceiling panels as “our [i.e., IBEW] material” and added, “We’re going to be getting this work. So we’re just going to take it now.”¹²⁵ The electricians subsequently added that they were instructed to take these LED ceiling panels by their foreman, Anthony Garcia, one of the head

¹¹⁷ Tr. Vol. I 150:3-24 (Dodds).

¹¹⁸ Tr. Vol. I 146:7-16 (Dodds); Tr. Vol. I 150:3-13 (Dodds); Tr. Vol. I 252:24-10 (Elwood).

¹¹⁹ Tr. Vol. I 150:19-24 (Dodds).

¹²⁰ Tr. Vol. I 151:6-13 (Dodds).

¹²¹ Tr. Vol. I 151:6-13 (Dodds).

¹²² Tr. Vol. I 237:6-16 (Lewis).

¹²³ Tr. Vol. I 243:2-21 (Lewis).

¹²⁴ Tr. Vol. I 160:19-161:23 (Dodds).

¹²⁵ Tr. Vol. I 160:19-161:23 (Dodds).

former for RE2.¹²⁶

There is neither any business reason for the RE2 IBEW electricians to be in GFE's staging area nor any business reason for them to be removing the LED ceiling panels therefrom, particularly provided that RE2 has no work with the CoolEdge manufacturing company.¹²⁷ Accordingly, the only conceivable explanation why IBEW electricians began removing the LED ceiling panels is because they were trying to stop the carpenters from performing that installation work.¹²⁸

d. The Electricians Proposed A Change Order To Take Over The Tech Strip Installation Work Being Performed By Members Of The Carpenters Union.

RE2, the joint venture of two electrical subcontractors, also – as a part of the land-grabbing over the work already assigned to Carpenters – went so far as to submit a Proposed Change Order to Holder in March, 2017, in an attempt to take over the tech strip installation work at seven out of the nine entryways to the main building on the AC-2 Project.¹²⁹ Apple ultimately assigned this work – after the pressure tactics discussed herein – to the IBEW-signatory contractors, even though Apple had previously assigned the work to R&S and GFE.

e. The March, 2017, Meeting Between The Carpenters Union And The IBEW.

Towards the end of March, 2017, after receiving a call from Sal Ventura, a Business Agent and Political Director of IBEW, Local 332, Solis met with Pfeiffer, a Business Manager of IBEW, Local 332, and Sal Ventura, a Business Agent and Political Director of the IBEW.¹³⁰ In this meeting at IBEW's office building, in a conference room, between Solis, Pfeiffer, and Ventura, Pfeiffer asked Solis whether Solis is aware of what "the issue" is at the AC-2 Project

¹²⁶ Tr. Vol. I 169:21-22 (Dodds); Tr. Vol. 161:17-25 (Dodds).

¹²⁷ Tr. Vol. I 167:16-24 (Dodds).

¹²⁸ Tr. Vol. I 168:3-13 (Dodds).

¹²⁹ Tr. Vol. I 243:23-244:9 (Lewis); CP Exh. 15.

¹³⁰ Tr. Vol. I 110:15-111:16 (Solis).

with GFE “taking electricians’ work.”¹³¹ Pfeiffer commented that “the carpenters [are] stealing [IBEW] work,” and their taking of electricians’ work is “not right.” (Tr. Vol. I 112:4-12 (Solis).)

Pfeiffer then asked Solis if he – as a representative of the Carpenters Union – is willing to have a composite crew to help install the ceiling system out there, and Solis replied that he did not want to have one.¹³² Pfeiffer then jumped out of his chair, pounded on the table, started yelling that this is “bullshit,” and called the carpenters “predators,” adding that the carpenters are “stealing [IBEW] work.”¹³³ Pfeiffer then followed up on this by saying, “you guys [carpenters] need a composite crew and that’s it.”¹³⁴ After Solis responded that he is not willing to agree to the composite crew, Pfeiffer again responded that the Carpenters Union’s position is “bullshit,” that carpenters are always stealing electricians’ work, and that the carpenters are “in bed with the laborers.”¹³⁵

Pfeiffer mentioned during that conversation that the Carpenters Union stole IBEW work at the Netflix construction project, in Los Gatos, California – where electricians picketed the job for a day and effectively stopped the project for the day.¹³⁶ Pfeiffer then asked Solis, “What is it going to take to get a composite crew?”¹³⁷ Solis responded that the Carpenters Union is not going to agree to that.¹³⁸ Pfeiffer then jumped out of his chair again, pounded his fists on the table, and repeated that what the Carpenters Union is doing – i.e., allegedly stealing union electricians’ work – is “bullshit.”¹³⁹ While pounding on the table, at one point, Pfeiffer said that he has 900 pissed-off electricians that are “ready to walk off the job and we’ll take the sheet

¹³¹ Tr. Vol. I 112:4-10 (Solis).

¹³² Tr. Vol. I 114:1-12 (Solis).

¹³³ Tr. Vol. I 114:1-12 (Solis).

¹³⁴ Tr. Vol. I 114:13-22 (Solis).

¹³⁵ Tr. Vol. I 114:13-22 (Solis).

¹³⁶ Tr. Vol. I 119:3-12 (Solis); Tr. Vol. I 119:24-120:3 (Solis).

¹³⁷ Tr. Vol. I 114:23-115:8 (Solis).

¹³⁸ Tr. Vol. I 114:23-115:8 (Solis).

¹³⁹ Tr. Vol. I 115:15-24 (Solis).

metal guys and the plumbers with us and whoever the fuck else we can take.”¹⁴⁰

At that time, Ventura leans in towards Solis and asks, “What’s it going to take to get a composite crew out because you know this is our work and that you guys are stealing it.”¹⁴¹ After Solis responded that the Carpenters Union is not going to agree to a composite crew, Ventura leaned in toward him with a wide grin and said, “That’s what I’d hoped you say.”¹⁴² He then repeated, with an even bigger grin, “That’s what I’d hoped you say,” as if to imply that there would be retribution for the Carpenters Union taking that position.¹⁴³ At that point, Pfeiffer stormed out of the room upset, and upon passing Solis near the exit, Pfeiffer muttered, “Fuck you,” under his breath to Solis.¹⁴⁴

f. March 28 Voicemail From IBEW Business Representative Gerald Pfeiffer To John Elwood.

On or around March 28, 2017, Elwood received a voicemail from Pfeiffer in which Pfeiffer expressed that the IBEW should be performing the installation of the LED ceiling panels.¹⁴⁵ Although the original voicemail was deleted, the transcription of the voicemail created by Elwood’s iPhone,¹⁴⁶ along with Elwood’s testimony at the hearing, clarify that Pfeiffer’s left the following voicemail to Elwood:

Hey John this is Gerald Pfeiffer, business manager financial secretary [of] IBEW 332[.] Just had a conversation with the Carpen[t]er next-door Rick Soli[s] and he says the carpenters are claiming the light fixtures and are going to continue to hang light fixtures at the Apple Campus 2 and that’s unacceptable to the IBEW[.] [T]hat needs to stop immediately[.] I’ve got 900 guys out there asking questions [about] what the hell is going on[,] how come carpenters are hanging our light fixtures[.] [I]t is not part of the ceiling[,] it is a light fixture and I just be [] by the []. [Give]

¹⁴⁰ Tr. Vol. I 118:5-16 (Solis); Tr. Vol. I 129:3-18 (Solis).

¹⁴¹ Tr. Vol. I 116:7-16 (Solis).

¹⁴² Tr. Vol. I 116:7-16 (Solis); Tr. Vol. I 117:5-19 (Solis).

¹⁴³ Tr. Vol. I 116:7-16 (Solis); Tr. Vol. I 117:5-19 (Solis).

¹⁴⁴ Tr. Vol. I 116:17-21 (Solis).

¹⁴⁵ Tr. Vol. I 256:19-257:23 (Elwood); Tr. Vol. I 259:17-20 (Elwood).

¹⁴⁶ Tr. Vol. I 263:1-7 (Elwood).

me a call 408-677-8725[.] [T]hank you, bye¹⁴⁷

As believed by Elwood,¹⁴⁸ this voicemail is not only an implied threat of future strike activity, but it is also clearly the IBEW stating that members of the Carpenters Union should not be performing the installation of the LED ceiling panels as well as a demand to be provided with the disputed work.

g. The IBEW’s Threat To “Wobble” On The AC-2 Jobsite.

On March 29, 2017, Neil Struthers, a representative of the IBEW,¹⁴⁹ called John Hillegass, the Director of Construction at Apple, Inc., to tell him that the IBEW is upset with Apple for assigning specific work to the Carpenters Union and GFE.¹⁵⁰ Struthers went on to tell Hillegass during that call that hundreds of electrical workers were upset and that if Apple did nothing about this, electricians would “wobble” the job.¹⁵¹ As noted above, “wobble” is a term used in the building trades to describe wildcat actions, sabotage, slowdowns, and strikes.¹⁵²

h. Two Demands By IBEW Shop Stewards For Carpenter-Assigned Construction Work In May, 2017.

On at least two different occasions, Dodds twice witnessed an IBEW Shop Steward stating that the union carpenters should not be performing IBEW electricians’ work – the work in dispute. On one day in early May, 2017, while GFE carpenters had been installing part of the tech strip assembly on the fourth floor of the AC-2 Project, IBEW electricians approached the carpenters and said, “You’re doing our work. What are you doing here?”¹⁵³ Dodds recognized the electricians, and one of them, a Shop Steward, also told the carpenters to “stop” performing

¹⁴⁷ CP Exh. 9; Tr. Vol. I 260:25-261:2 (Elwood); Tr. Vol. I 261:4-15 (Elwood); Tr. Vol. I 261:18-25 (Elwood); Tr. Vol. I 262:17-22 (Elwood); Tr. Vol. I 264:6-14 (Elwood).

¹⁴⁸ Tr. Vol. I 262:23-263:1 (Elwood).

¹⁴⁹ Tr. Vol. I 205:8-207:11 (Bradshaw).

¹⁵⁰ Tr. Vol. I 195:5-25 (Bradshaw); Tr. Vol. I 204:4-205:1 (Bradshaw); Tr. Vol. I 205:9-207:11 (Bradshaw).

¹⁵¹ Tr. Vol. I 196:6-11 (Bradshaw).

¹⁵² Tr. Vol. I 196:13-16 (Bradshaw).

¹⁵³ Tr. Vol. I 164:1-8 (Dodds); Tr. Vol. I 165:7-14 (Dodds).

the installation work in dispute at that time.¹⁵⁴ Those electricians eventually left and returned with a camera and proceeded taking pictures of the carpenters performing the installation work.¹⁵⁵ The electricians then began loitering around the carpenters' work area, and they spoke loudly enough for the carpenters to hear them say that the work they are performing is electricians' work and that they are taking steps to document what the carpenters are doing so that it would become their work.¹⁵⁶

On a separate occasion, in mid-May, 2017, Dodds saw who he recognized as the IBEW's Shop Steward – who at the time was wearing an RE2 vest – telling GFE carpenters, “You're taking our work.”¹⁵⁷

F. The IBEW Engaged In Coercive And Threatening Conduct For An Unlawful Jurisdictional Object At The AC-2 Project.

1. The IBEW Expressly And Impliedly Threatened To Engage In Work Stoppages.

The IBEW issued two express threats that it would engage in work stoppages if the disputed work is not reassigned from the union carpenters to the IBEW electricians. First, as explained above, Pfeiffer expressly told Solis that that he has 900 pissed-off electricians that are “ready to walk off the job and we'll take the sheet metal guys and the plumbers with us and whoever the fuck else we can take.”¹⁵⁸ Additionally, Struthers threatened to engage in a “wobble,” which, as noted above, includes walk-outs, slow-downs of work, and leaving the jobsite during working time to address to employer.¹⁵⁹

The IBEW also made implied threats of what could happen if the disputed work was not

¹⁵⁴ Tr. Vol. I 164:1-8 (Dodds); Tr. Vol. I 165:7-14 (Dodds).

¹⁵⁵ Tr. Vol. I 164:1-10 (Dodds).

¹⁵⁶ Tr. Vol. I 164:21-165:6 (Dodds).

¹⁵⁷ Tr. Vol. I 160:1-10 (Dodds); Tr. Vol. I 163:13-20 (Dodds); Tr. Vol. I 165:15-20 (Dodds); Tr. Vol. I 165:22-166:6 (Dodds).

¹⁵⁸ Tr. Vol. I 118:5-16 (Solis); Tr. Vol. I 129:3-18 (Solis).

¹⁵⁹ Tr. Vol. I 196:6-11 (Bradshaw).

reassigned to the IBEW electricians from GFE and the Carpenters Union. For example, Pfeiffer told Elwood over a voicemail that the carpenters need to stop hanging light fixtures, because the IBEW has 900 guys out on the AC-2 Project who are asking questions about “what the hell is going on.”¹⁶⁰ This is a clearly-implied threat the electricians would walk off of the job and cause a serious problem at the AC-2 Project; otherwise, there would be no reason for Pfeiffer to mention the number of electricians that he has on the AC-2 Project and the fact that they are upset.

2. The IBEW Has Been Engaging In A Consistent Slowdown Of Work To Prevent The Carpenters From Installing the LED Ceiling Panels.

As noted above, in order to install the LED ceiling panels, first, the IBEW electricians employed by RE2 must run the “home-run” cables through the integrated Richter ceiling systems, and then, they have to install the “t-cables” with “pigtails.”¹⁶¹ RE2 is under contract with Holder Construction both: (a) to install the “home-run” cables to send the DC power through the ceiling; and (b) to install the “pigtails” as well, which provide power directly to the LED ceiling panels.¹⁶²

The aforementioned electrician work was supposed to be completed two months prior to the Hearing – i.e., in mid-April, 2017 – but it has yet to be completed.¹⁶³ Despite the fact that *all* of the preliminary work has been completed for RE2 and the IBEW electricians to continue performing this electrical work, the IBEW electricians have been far behind schedule and have thus far failed to install any of the “pigtails” at the AC-2 Project.¹⁶⁴ Moreover, although the electricians are well behind schedule in terms of running the electrical wiring necessary to power

¹⁶⁰ CP Exh. 9; Tr. Vol. I 260:25-261:2 (Elwood); Tr. Vol. I 261:4-15 (Elwood); Tr. Vol. I 261:18-25 (Elwood); Tr. Vol. I 262:17-22 (Elwood); Tr. Vol. I 264:6-14 (Elwood).

¹⁶¹ Tr. Vol. I 139:23-140:15 (Dodds).

¹⁶² Tr. Vol. I 92:18-93:6 (George); Tr. Vol. I 97:25-98:8 (George).

¹⁶³ Tr. Vol. I 40:22-25 (George); Tr. Vol. I 232:6-12 (Lewis); Tr. Vol. I 40:12-17 (George).

¹⁶⁴ Tr. Vol. I 40:19-21 (George); Tr. Vol. I 93:17-24 (George).

the LED ceiling panels at the AC-2 Project, a fact which might naturally cause employees to work harder and faster, Dodds has seen firsthand that the electricians on site are continuing to work at an unusually slow pace.¹⁶⁵ This slowdown is not surprising, provided both the electricians' continuous demands to take over the installation of the LED ceiling panels and provided that the work that the electricians are slow to perform is the last step necessary to permit the installation of the disputed work – i.e., the installation of the LED ceiling panels.

The foregoing facts provide more than reasonable cause to believe that the IBEW electricians are engaging in an unlawful slowdown for the purpose of acquiring the disputed work. For the past four-to-five months prior to the Hearing, GFE and the union carpenters have been ready and waiting to install the LED ceiling panels.¹⁶⁶ However, if the electricians continue to stall their installation of the “home-run” cables and “pigtails,” if the disputed work is ever reassigned to the IBEW electricians, the electricians' efforts would result in a windfall of *all* of the disputed work to the IBEW. This work slowdown – which is the equivalent of a work stoppage – cannot be more clearly aimed at an unlawful jurisdictional object.

3. The IBEW Electricians From All Electrical Contractors Engaged In At Least Two Separate Walk-Offs In May, 2017.

On Thursday, May 11, 2017, both Lewis and Elwood received information that the electricians might not be coming in to work on the AC-2 Project on the following day, May 12, and would be calling in sick to work.¹⁶⁷ Although there had been no outbreaks of any illness among the employees in any other job classification of workers employed on the AC-2 Project, all 900 electricians employed on the AC-2 Project called out sick from work on May 12, and

¹⁶⁵ Tr. Vol. I 140:25-141:14 (Dodds).

¹⁶⁶ Tr. Vol. I 140:16-20 (Dodds); Tr. Vol. I 139:16 (Dodds).

¹⁶⁷ Tr. Vol. I 217:17-218:5 (Lewis); Tr. Vol. I 267:8-22 (Elwood).

none of them appeared at work.¹⁶⁸

As noted above, electricians are relatively easy to spot on the AC-2 Project.¹⁶⁹ However, none of the electricians, including those employed by CH Reynolds and RE2, were in attendance.¹⁷⁰ Although Elwood would typically see between 50 and 100 electricians at the jobsite, he did not see any electricians working or near the jobsite on that day.¹⁷¹ Although Dodds typically sees between 200 and 300 electricians and typically sees electricians in the CH Reynolds “office”¹⁷² and the RE2 “office,” the latter of which is approximately 15 feet away from his own work area, Dodds also did not see any electricians working on the AC-2 Project throughout his day on the jobsite.¹⁷³ The only electricians he saw on the AC-2 Project were those who were leaving the jobsite in the early hours of the morning or just hanging around at a time when electricians would be getting ready to start their next day shift which would normally begin at 7:00 a.m.¹⁷⁴ At around 6:30 a.m. on that day, Davie Frazier, a Superintendent at R&S, confirmed for Dodds that the electricians had walked off of the job.¹⁷⁵

On that same day, May 12, 2017, Lewis, per his standard routine, arrives at the AC-2 Project at around 5:00 a.m. and meets with field leadership from R&S and Holder at around 7:00 a.m.¹⁷⁶ After the 7:00 a.m. meeting is a 7:30 a.m. meeting with the foremen for the subcontractors of both Holder and R&S.¹⁷⁷ On May 12, 2017, however, Lewis noticed that none of the foremen for the electricians attended the meeting, including those for both CH Reynolds

¹⁶⁸ Tr. Vol. I 234:5-15 (Lewis); Tr. Vol. I 235:3-11 (Lewis); Tr. Vol. I 151:18-152:10 (Dodds); Tr. Vol. I 217:12-14 (Lewis).

¹⁶⁹ See *infra* Section II(B)(4).

¹⁷⁰ Tr. Vol. I 152:11-13 (Dodds); Tr. Vol. I 176:25-177:4 (Dodds).

¹⁷¹ Tr. Vol. I 267:23-268:13 (Elwood).

¹⁷² Although referred to as “offices,” they are actually camp sites in hallways set up with a plans table with no walls and no doors. (Tr. Vol. I 222:1-12 (Lewis).)

¹⁷³ Tr. Vol. I 155:6-12 (Dodds); Tr. Vol. I 154:8-19 (Dodds); Tr. Vol. I 156:9-20 (Dodds); Tr. Vol. I 156:21-157:4 (Dodds).

¹⁷⁴ Tr. Vol. I 152:20-24 (Dodds).

¹⁷⁵ Tr. Vol. I 153:11-16 (Dodds).

¹⁷⁶ Tr. Vol. I 217:15-16 (Lewis).

¹⁷⁷ Tr. Vol. I 218:6-24 (Lewis).

and for RE2.¹⁷⁸ Nick Smith, one of Holder’s Superintendents, told Lewis at the meeting that the electricians would not be working on the AC-2 Project on that day.¹⁷⁹ Throughout that entire day, Lewis did not see any one of the 900 electricians on the AC-2 jobsite, even though, on a typical day, he would see about 200 electricians.¹⁸⁰ Lewis had additionally noticed during his walk around the AC-2 Project on that day that the electricians’ tool (“gang”) boxes were locked up and their rolling carts, which electricians roll around the worksite, were dead.¹⁸¹

The following week, on Tuesday, May 16, 2017, the IBEW electricians engaged in another walk-off. Dodds – despite typically seeing between 200 and 300 electricians on the jobsite and electricians in the CH Reynolds and RE2 offices – did not see any electricians, including those from at least two subcontractors, on the AC-2 Project jobsite.¹⁸² On that day, a representative from R&S confirmed to Dodds that none of the electricians were on site that day, a fact which is unusual because electricians – on a typical day – are always on site.¹⁸³ Although Lewis also sees about 200 electricians each day he visits the AC-2 Project, on May 16, he also did not see any electricians on the jobsite.¹⁸⁴ Frazier confirmed to Lewis on that day that none of the electricians would be coming into work on the AC-2 Project.¹⁸⁵

In light of the consistent threats and complaints issued by the IBEW since March, 2017, there is unquestionably reasonable cause to believe that these work stoppages were intended to have Apple, R&S, and GFE reassign the disputed work to the IBEW electricians. This is particularly evident in light of Pfeiffer’s direct threat that 900 “pissed-off” electricians were “ready to walk off the job and we’ll take the sheet metal guys and the plumbers with us and

¹⁷⁸ Tr. Vol. I 218:6-24 (Lewis); Tr. Vol. I 220:6-13 (Lewis).

¹⁷⁹ Tr. Vol. I 219:14-220:5 (Lewis).

¹⁸⁰ Tr. Vol. I 221:3-16 (Lewis); Tr. Vol. I 221:19-24 (Lewis); Tr. Vol. I 226:16-22 (Lewis).

¹⁸¹ Tr. Vol. I 221:3-16 (Lewis); Tr. Vol. I 221:19-24 (Lewis).

¹⁸² Tr. Vol. I 158:9-15 (Dodds); Tr. Vol. I 176:25-177:4 (Dodds).

¹⁸³ Tr. Vol. I 158:21-159:8 (Dodds).

¹⁸⁴ Tr. Vol. I 231:2-11 (Lewis).

¹⁸⁵ Tr. Vol. I 227:25-228:18 (Lewis).

whoever the fuck else we can take” if the carpenters continue with their intent to install the LED ceiling panels.¹⁸⁶

III. THE IBEW’S CONDUCT VIOLATED SECTION 8(B)(4)(D).

NLRA Section 8(b)(4)(D) makes it an unfair labor practice for a labor organization or its agents:

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) *to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is--*

....

(D) *forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.*¹⁸⁷

Before the Board may proceed with a determination of a dispute under Section 10(k) of the NLRA, the following must be demonstrated: (1) there are competing claims for the work; (2) there is reasonable cause to believe that NLRA Section 8(b)(4)(D) has been violated; and (3) the parties have not agreed on a method for the voluntary adjustment of the dispute.¹⁸⁸ The foregoing standard requires finding that there is “reasonable cause” to believe: (1) that there are competing claims to the disputed work; and (2) that a party has used proscribed means to enforce

¹⁸⁶ Tr. Vol. I 118:5-16 (Solis); Tr. Vol. I 129:3-18 (Solis).

¹⁸⁷ 29 U.S.C. (“NLRA”) § 158(b)(4)(D) (emphasis added).

¹⁸⁸ See *Laborers’ Local 113 (Super Excavators, Inc.)* (“*Super Excavators*”) (2002) 338 NLRB 472, 474 (citing *Carpenters Local 275 (Lymo Construction Co., Inc.)* (2001) 334 NLRB No. 67, slip op. at 2; *Teamsters Local 259 (Globe Newspaper Co.)* (1999) 327 NLRB 619, 622; *Laborers Local 113 (Super Excavators)* (1998) 327 NLRB 113, 114.

its claim to the work in dispute.¹⁸⁹

The uncontradicted record sets forth that there is no agreed-upon method for the voluntary adjustment of work jurisdiction disputes on the AC-2 Project,¹⁹⁰ so the third factor of this preliminary test is clearly satisfied. As explained further below, the first two factors are similarly satisfied in the present matter.

A. There Are Competing Claims To The Disputed Work.

“It is well established that a dispute within the meaning of Section 8(b)(4)(D) requires a choice between two competing groups.”¹⁹¹ Accordingly, there must be “either an attempt to take a work assignment away from another group, or to obtain the assignment rather than have it given to the other group.”¹⁹² In the present case, the record is replete with such competing claims by the IBEW and RE2 as well as the Carpenters Union, GFE, and R&S.

First, the record establishes that R&S and GFE assigned the installation of the LED ceiling panels to the members of the Carpenters Union.¹⁹³ Understandably, and as explained herein, R&S, GFE, and the Carpenters Union have consistently announced their desire and intent to maintain this arrangement.¹⁹⁴

In contrast, the IBEW cannot dispute that the “object” of its threats, walk-offs, and slowdown have been intended to coerce Apple, R&S, and GFE to reassign the disputed work over to the IBEW, because IBEW agents have made repeated statements of their intention to take the disputed work from the Carpenters and demanded that the Carpenters Union members stop performing the disputed work. The following is a shortlist of examples which have been set out in more detail above:

¹⁸⁹ *Ohio & Vicinity Reg'l Council of Carpenters (Competitive Interiors, Inc.)* (2006) 348 NLRB 266, 268.

¹⁹⁰ *See infra* Section II(D).

¹⁹¹ *United Food & Commercial Workers Local 1222 (FedMart Stores)* (1982) 262 NLRB 817, 819.

¹⁹² *Id.*

¹⁹³ *See infra* Section II(E)(1).

¹⁹⁴ *See infra* Section II(E)(1); *see also infra* Section IV(B).

At the coordination meeting on March 22, 2017, IBEW representatives demanded that IBEW electricians be assigned the work being performed by members of the Carpenters Union, saying, “We’re here to dispute this work. We feel this is our work,” and adding, “We [i.e., the IBEW] see the tech strips as our scope of work.”¹⁹⁵

During the meeting which took place shortly after the March 22, 2017, coordination meeting, IBEW representatives repeated their claim over the disputed work, stating that the work being performed by members of the carpenters union should be IBEW work.¹⁹⁶

After having been caught removing LED ceiling panels from GFE’s staging area, IBEW electricians claimed that the LED ceiling panels are the IBEW’s material and stated that the IBEW is “going to be getting this work. So we’re just going to take it now.”¹⁹⁷

In a meeting between the IBEW and the Carpenters Union in March, 2017, Pfeiffer demanded that there be a composite crew of electricians and carpenters to install the LED ceiling panels because the installation is IBEW electrician’s work and the carpenters are “stealing” it from the electricians.¹⁹⁸

In a voicemail left with Elwood, Pfeiffer claimed that the work of hanging the “light fixtures” belongs to the IBEW and that the carpenters must stop continuing to “hang light fixtures” at the AC-2 Project.¹⁹⁹

Additionally, on two occasions in May, 2017, IBEW electricians, including an IBEW Shop Steward, told the carpenters, “You’re doing our work,” demanded that the carpenters to “stop” performing the installation of the disputed work, and told the carpenters “You’re taking

¹⁹⁵ See *infra* Section II(E)(2)(a).

¹⁹⁶ See *infra* Section II(E)(2)(b).

¹⁹⁷ See *infra* Section II(E)(2)(c).

¹⁹⁸ See *infra* Section II(E)(2)(e).

¹⁹⁹ See *infra* Section II(E)(2)(f).

our work.”²⁰⁰

In light of the foregoing, it is well-supported by the record that there are competing claims over the installation work in dispute.

B. The IBEW Used Proscribed Means To Enforce Its Claims To The Disputed Work In Violation Of NLRA Section 8(b)(4)(D).

There are multiple events which took place between the months of March, April, and May, 2017, which preclude the IBEW from credibly disputing that the IBEW attempted to secure the work assignment through unlawful means. Under NLRA Section 8(b)(4)(D), it is an unfair labor practice to encourage individuals to engage in, or threaten, a work stoppage where an object thereof is to force or require “any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class”

Accordingly, *on its own*, “[a] *threat* to strike . . . to force or require an employer to reassign disputed work” creates reasonable cause to believe that Section 8(b)(4)(D) has been violated.²⁰¹ In the present matter, the IBEW made at least *two* express threats of its intent to engage in separately-unlawful/strike activity if the disputed work is not reassigned from the union carpenters to the IBEW electricians: (1) Pfeiffer told Solis that if the Carpenters Union did not agree to allow electricians to perform the disputed work through a composite crew setup, the IBEW had 900 “pissed-off electricians” who are “ready to walk off the job and we’ll take the sheet metal guys and the plumbers with us and whoever the fuck else we can take”; and (2) Struthers threatened Apple to engage in a “wobble” – i.e., walk-outs, slow-downs of work, and

²⁰⁰ See *infra* Section II(E)(2)(h).

²⁰¹ See *Laborers’ Int’l Union of North America, Local 76 (Albin Carlson Co.)* (1987) 286 NLRB 698, 699-70 (emphasis added).

leaving the jobsite to address the employer directly.²⁰² In light of the foregoing express threats of further-unlawful/strike activity, in addition to the implied threat that Pfeiffer left on Elwood's voicemail that 900 guys are complaining about the carpenters' intent to perform the installation of the LED ceiling panels,²⁰³ there is unquestionably well-beyond reasonable cause to believe that the IBEW violated NLRA Section 8(b)(4)(D) by threatening to engage in work stoppages.

An organized slowdown of work for the purpose of forcing an employer to assign work to a particular group of employees or labor organization over another has also been found to provide reasonable cause to believe that NLRA Section 8(b)(4)(D) has been violated, as slowdowns of work are tantamount to work stoppages.²⁰⁴ In the present matter, although the IBEW electricians are able to install the electrical power lines necessary for the LED ceiling panels to be installed, the IBEW electricians have been seen to be working particularly slowly, this in spite of the fact that they are now over two months behind schedule – a fact which would naturally make a contractor and its employees more interested in working quickly and efficiently. In fact, at the present time, even though the IBEW electricians are more than two months behind schedule, the IBEW electricians have failed to run the wiring sufficient to enable the Carpenters Union members and GFE to install even *one* LED ceiling panel in the AC-2 Project's main building. Particularly in light of the consistent demands by the IBEW to perform the installation of the disputed work between March and May, there is certainly reasonable cause to believe that the IBEW electricians are engaging in an intentional slowdown of work for the direct purpose of placing pressure on Apple, R&S, and GFE to reassign that work to the IBEW electricians.²⁰⁵

Because coercive threats, standing alone, are sufficient to establish a violation of NLRA

²⁰² See *infra* Section II(F)(2).

²⁰³ See *infra* Section II(F)(2).

²⁰⁴ See, e.g., *Port of Portland* (1977) 233 NLRB 459; see also, e.g., *The Washington Post Company* (1980) 251 NLRB 172, 174.

²⁰⁵ See *infra* Section II(F)(2).

Section 8(b)(4)(D), The Board has found it “unnecessary to pass on whether the subsequent picketing by [a union] had as one of its objects the reassignment of the disputed work to employees it represents.”²⁰⁶ However, in the instant matter, the IBEW followed up on its express and implied threats to engage in work stoppages with all “900 electricians” on the AC-2 Project on at least two separate days: on May 12 and May 16, 2017.²⁰⁷ Reports that electricians from more than one of the electrical subcontractors would be walking off of the job on May 12 were confirmed after none of the electricians were seen on site or at scheduled meetings by multiple individuals, despite the fact that those individuals – as reported above – typically see hundreds of electricians each day.²⁰⁸ None of those individuals saw any electricians, including those from at least two different electrical contractors, working on the AC-2 Project and received confirming reports that the IBEW electricians planned not to come into work on that day.²⁰⁹

In light of the fact that the IBEW electricians had previously and expressly threatened to walk off of the job with their “900 electricians” over the assignment of the disputed work to union carpenters, the fact that the IBEW’s claims over that work continued through March, April, and May, 2017, and the fact that there are no disputes provided on the record that the IBEW had on the jobsite other than work jurisdiction disputes, there is sufficiently more than the requisite reasonable cause to believe that the two walk-offs by the IBEW violated NLRA Section 8(b)(4)(D), as they were directly purposed to place pressure on Apple, R&S, and GFE to reassign the disputed work from the Carpenters Union to the IBEW.

IV. THE BOARD SHOULD AFFIRM R&S’S DECISION TO ASSIGN THE DISPUTED WORK TO THE CARPENTERS UNION.

In making a work assignment determination under Section 10(k):

²⁰⁶ See *Operating Engineers, Local 150 (R&D Thiel)* (2009) 354 NLRB No. 46.

²⁰⁷ See *infra* Section II(F)(3).

²⁰⁸ See *infra* Section II(F)(3).

²⁰⁹ See *infra* Section II(F)(3).

[t]he Board will consider all relevant factors in determining who is entitled to the work in dispute, e.g., the skills and work involved, certifications by the Board, company and industry practice, agreements between unions and between employers and unions, awards of arbitrators, joint boards, and the AFL-CIO in the same or related cases, the assignment made by the employer, and the efficient operation of the employer's business.²¹⁰

In light of the foregoing, the NLRB will consider the following factors in determining how to assign work in dispute: (1) the skills and work involved; (2) company and industry practice; (3) the agreements between unions and between employers and unions; (4) awards of arbitrators and certifications by the Board; (5) assignments made by the employer; and (6) the efficient operation of the employer's business. "This list of factors," the Board has cautioned, "is not meant to be exclusive, but is by way of illustration."²¹¹ "Every decision will have to be an act of judgment based on common sense and experience rather than on precedent."²¹² However, between the factors, the Board consistently places "great weight on the factors of contract coverage and employer preference in making work assignment awards."²¹³

As explained below, each one of the above-referenced factors considered by the NLRB weighs strongly in favor of maintaining R&S's assignment of the disputed work to GFE and the members of the Carpenters Union.

A. R&S Has A Signed Collective Bargaining Agreement With The Carpenters Union, Has No Such Agreement With The IBEW, And Would Risk Breaching Its Contract With The Carpenters Union If The Disputed Work Is Assigned To The IBEW.

It is undisputed that R&S does not have any contractual relationship with the IBEW or an

²¹⁰ *International Ass'n of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Constr. Co.)* (1962) 135 NLRB 1402, 1411.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Int'l Longshoremen's, etc., Union, Local 50 (Brady-Hamilton Stevedore Company and Willamette Western Corporation)* (1979) 244 NLRB 275, 276.

IBEW subcontractor; however, it is bound to a collective bargaining agreement, the CMANC,²¹⁴ with the Carpenters Union.²¹⁵ As stated by Frank Nunes, the CEO of the Wall and Ceiling Alliance for the past six years,²¹⁶ employers who are signatory to the Drywall Lathing Master Agreement must have all carpentry work performed under the CMANC, and if you are signatory to the CMANC, then you are also signatory to the Drywall Lathing Master Agreement.²¹⁷ The work in dispute is expressly included in the scope of the CMANC, which covers “[a]ll carpentry work on all construction” and, more specifically, “[w]ork in connection with . . . suspended ceilings.”²¹⁸

In light of the subcontracting language contained in the CMANC and the fact that the work in dispute is covered directly within the scope of work set forth in the CMANC,²¹⁹ R&S is required by contract to assign the disputed work to a subcontractor which is signatory to the CMANC.²²⁰ Had R&S not subcontracted the disputed work to a subcontractor that is signatory to a collective bargaining agreement with the Carpenters Union, such as GFE, R&S would have opened itself to a grievance for violating the subcontracting provisions of the CMANC.²²¹ Furthermore, requiring R&S to take work that was assigned to the Carpenters Union away from them and reassign that work the IBEW would risk harming R&S’s partnership and longstanding positive relationship with the Carpenters Union and further harm labor peace on the AC-2

²¹⁴ See Charging Party (“CP”) Exhibit (“Exh.”) 1; Tr. Vol. I 14:10-14.

²¹⁵ See Charging Party (“CP”) Exhibit (“Exh.”) 1; Tr. Vol. I 14:10-14.

²¹⁶ The Wall and Ceiling Alliance is an association of drywall, lathing and plastering subcontractors in Northern California which serves as a multi-employer bargaining association, spending 70-to-75 percent of its bargaining hours bargaining with the Carpenters Union. (Tr. Vol. I 178:1-179:14 (Nunes).) There are approximately 80 contractors – employing a combined total of over 3,000 employees – who belong to the WCA, including those who are signatory with the Carpenters Union in Northern California. (Tr. Vol. I 180:4-24 (Nunes).) The number of hours that employer members contribute to the various union trust funds every year is approximately 11 million hours. (Tr. Vol. I 181:1-15 (Nunes).) Approximately 95 percent of all of the union acoustical ceiling work is done by members of the WCA in Northern California, and it is primarily a carpenter craft. (Tr. Vol. I 182:6-24 (Nunes).)

²¹⁷ Tr. Vol. I 183:11-16 (Nunes).

²¹⁸ CP Exh. 1 § 4.

²¹⁹ See CP Exh. 1 § 4.

²²⁰ Tr. Vol. I 27:10-16 (Aherne); Tr. Vol. I 90: 24-91:3 (George).

²²¹ See Tr. Vol. I 29:4-30:9 (Aherne); see also Tr. Vol. I 27:10-16 (Aherne); see also CP Exh. 1 §§ 4, 50.

Project.²²²

Accordingly, R&S's collective bargaining agreement with the Carpenters Union, which covers the disputed work – work which, as explained below, has been routinely performed by the Carpenters Union, and has been found to fall within the scope of the CMANC for decades – strongly favors awarding the disputed work to the Carpenters Union. This is bolstered by the fact that R&S has no contractual relationship with the IBEW.

B. Apple, R&S, And GFE All Have Expressed A Continued Preference To Assign Members Of The Carpenters Union The Work In Dispute.

The Board has identified the preference of the employer in assigning the work in dispute as being relevant to, and a critical factor in, its 10(k) determination.²²³ With respect to employer preference, R&S has consistently expressed its desire to assign the disputed work to the Carpenters Union, just as it has throughout its 57 years in business.²²⁴ R&S memorialized its preference to assign the disputed work to members of the Carpenters Union in a letter dated March, 30, 2017, which states that it is R&S's intent to have union carpenters “upload, unpack, and install . . . the low voltage LED lighting units and associated low voltage wiring and connectors . . . which *together form an integrated, completed, illuminated or non-illuminated ceiling system.*”²²⁵ R&S added that it considers the disputed work “to be ours to perform.”²²⁶

In addition to Apple, which has expressed a preference to assign the disputed work to the union carpenters,²²⁷ GFE has consistently expressed its preference to assign this work to union carpenters as opposed to electricians.²²⁸ Like with R&S, GFE would not have consistently

²²² Tr. Vol. I 14:15-18 (Aherne).

²²³ See *Brady-Hamilton Stevedore Company* (1979) 244 NLRB 275, 276; see also *NLRB v. International Longshoremen's & Warehousemen's Union* (9th Cir. 1974) 504 F.2d 1209, 1221-222.

²²⁴ Tr. Vol. I 25:6-18 (Aherne); Tr. Vol. I 11:2-4 (Aherne); Tr. Vol. I 14:10-14 (Aherne).

²²⁵ CP Exh. 4 (emphasis added).

²²⁶ CP Exh. 4.

²²⁷ Tr. Vol. I 23:24-25:2 (Aherne).

²²⁸ Tr. Vol. I 61:5-8 (George).

assigned its work to install luminous ceilings to union carpenters for almost 40 years if it was not its preference to do so.²²⁹ In addition, in a letter of assignment, GFE also memorialized its preference to assign the installation of LED ceiling panels to members of the Carpenters Union.²³⁰ In light of the foregoing, there is no question that employer preference favors the assignment of the disputed work to members of the Carpenters Union.

C. Rudolph & Sletten, GFE, And The Construction Industry At Large Have Continuously And Consistently Assigned The Work In Dispute To The Carpenters For At Least The Past Four Decades.

The NLRB has also identified both the employer's and industry past practice are relevant factors in determining to which labor organization work should be assigned.²³¹ For the reasons explained below, both of these factors favor assigning the disputed work to members of the Carpenters Union.

As the installation of ceiling panels imbedded with LEDs are a relatively new invention but are still, akin to non-luminous ceiling tiles, part and parcel of a single, integrated ceiling system, the fact that the construction industry has consistently, for a matter of decades, assigned the installation of ceiling panels to carpenters favors finding that the work in dispute – based on past practice – should continue to be assigned to the Carpenters Union. Nunes, who has been in the construction industry for roughly 37 years, is not aware of any instance in which any classification other than carpenters has ever been assigned to install ceiling systems.²³² Dodds, who works as an acoustical installer, installing ceiling systems, for approximately nine years,²³³ understands that carpenters have always been assigned to perform the installation of ceiling

²²⁹ Tr. Vol. I 71:1-24 (George).

²³⁰ CP Exh. 8.

²³¹ See *Plumbers & Pipefitters L. 412 (Zia Co.)* (1972) 168 NLRB 1140.

²³² Tr. Vol. I 184:6-11 (Nunes).

²³³ Tr. Vol. I 138:3-14 (Dodds).

systems.²³⁴ Even out in Massachusetts, HUNTAIR assigned the entire installation of an integrated ceiling system, including the installation of light fixtures, to carpenters, explaining in a letter that “[t]he [ceiling] grid is first and foremost a ceiling system” and “[w]ith the main components being more of a structural nature involving lifting, leveling, and hanging correctly to function properly it has been deemed in the past that this falls more into the carpenter labor force than electrical.”²³⁵ The foregoing, in conjunction with the past practice of the involved employers, demonstrates that industry past practice strongly favors assigning the disputed work – as part of an integrated ceiling system – to carpenters.

In practice, R&S has consistently assigned the installation of integrated ceiling systems exclusively to carpenters. In his testimony, Aherne confirmed that the installation of integrated ceiling systems, including – more recently – the installation of LED ceiling panels, has been assigned to carpenters by R&S since the inception of the company approximately 57 years ago.²³⁶ Aherne could not provide even one example of an instance in which this work was assigned to anyone other than carpenters during his 17-year tenure with R&S.²³⁷ Even when considering bids for the disputed work at the AC-2 Project, R&S only considered bids from Carpenters-signatory subcontractors, because it believes that the work called for was “carpenters’ work.”²³⁸ Even the previously-assigned general contractor, DPR Skanska, had only considered Carpenters-signatory subcontractors when permitting bidding on the installation of the LED ceiling panels at the AC-2 Project.²³⁹

GFE has similarly and consistently assigned all installation work, including the

²³⁴ Tr. Vol. I 138:12-18 (Dodds).

²³⁵ IP Exh. 3; Tr. Vol. I 193:18-24 (Bradshaw).

²³⁶ Tr. Vol. I 25:6-18 (Aherne); Tr. Vol. I 11:2-4 (Aherne).

²³⁷ Tr. Vol. I 25:6-18 (Aherne); Tr. Vol. I 11:2-4 (Aherne).

²³⁸ Tr. Vol. I 20:8-21:11 (Aherne).

²³⁹ Tr. Vol. I 21:12-22:1 (Aherne).

installation of luminous ceilings by natural light or pre-installed fluorescent light, to carpenters for almost 40 years.²⁴⁰ For the past 25-to-30 years, GFE has also assigned the installation of DC-powered, plug-and-play light fixtures and components consistently to union carpenters.²⁴¹ Accordingly, both the past practices of R&S and GFE favor the assignment of the LED ceiling panel installation to carpenters, who have decades of experience installing ceiling panels, and even panels with DC-powered, plug-and-play components.

As noted above, *LED* ceiling panels, such as the CoolEdge M-13 LED plug-and-play ceiling panels being installed on the AC-2 Project, have only been on the market for the past two years.²⁴² However, other than GFE, Nunes is aware of two other contractors who are involved in the installation of similar, low-voltage LED ceiling panels, and *both* of those contractors – Daley’s Drywall and Cal Drywall – use carpenters to install the LED ceiling panels.²⁴³

Similarly, throughout the past two years, GFE has consistently and exclusively assigned the installation of LED ceiling panels to union carpenters.²⁴⁴ In Charging Party Exhibit 6, GFE prepared a list of six construction projects at which GFE used union carpenters to install LED ceiling panels within the past two years – projects at which union electricians were present as well.²⁴⁵ For example, at Drop Box, GFE’s carpenters installed LED ceiling panels created by KiboWorks – ceiling panels which similarly required the carpenters to perform plug-and-play work – for a period of three months.²⁴⁶ At IBM, Genentech, Polhemus Garage, Junction Market Ready, and Ballmer, GFE, with union carpenters, installed LED ceiling panels on site without *any* objection from the IBEW electrical workers, who witnessed the carpenters performing the

²⁴⁰ Tr. Vol. I 71:1-24 (George).

²⁴¹ Tr. Vol. I 76:7-77:7 (George).

²⁴² Tr. Vol. I 8-19 (George); Tr. Vol. I 186:11-23 (Frank Nunes) (“Nunes”).

²⁴³ Tr. Vol. I 187:18-188:24 (Nunes).

²⁴⁴ Tr. Vol. I 94:10-96:9 (George); Tr. Vol. I 62:3-6 (George).

²⁴⁵ CP Exh. 7; Tr. Vol. I 79:18-80:24 (George).

²⁴⁶ Tr. Vol. I 83:2-84:7 (George); 85:25-86:1 (George).

work presently in dispute at the AC2 Project.²⁴⁷ GFE performed the Kendo, IBM, and Genentech installation work in 2016, and GFE performed the Polhemus Garage, Junction Market Ready, Ballmer, and Ford RIC installation work in 2017.²⁴⁸ The record also reflects that the installation work performed by union carpenters at Genentech involved plug-and-play work²⁴⁹ and the installation of the same CoolEdge M-13 LED plug-and-play panels that are being installed on the AC-2 Project.²⁵⁰ The Board should additionally take judicial notice that the work listed in Charging Party Exhibit 7 covers five different IBEW jurisdictions.²⁵¹

In addition to the projects listed on Charge Party Exhibit 7, as represented in Charging Party Exhibit 6, GFE assigned the installation of low-voltage LED ceiling panels at Ernst & Young's San Francisco, California, location to members of the Carpenters Union.²⁵² To install the GE Tetra LED ceiling panels there, similar to the CoolEdge LED panels, the carpenters conducted plug-and-play work.²⁵³

In light of the foregoing, both factors – the employer's past practice and the industry past practice – both strongly favor assigning the disputed work to the members of the Carpenters Union.

D. The Carpenters Performing The Installation Of The LED Ceiling Panels Possess The Requisite Skills, And Electricians Do Not Have Sufficient Training And The Expertise To Perform This Work.

In making determinations under NLRA Section 10(k), the Board also looks to the relative skills of the competing groups of workers.²⁵⁴ As explained above, it is undisputed in the record

²⁴⁷ Tr. Vol. I 85:2-10 (George).

²⁴⁸ Tr. Vol. I 86:2-10 (George).

²⁴⁹ Tr. Vol. I 86:11-25 (George).

²⁵⁰ Tr. Vol. I 86:11-25 (George).

²⁵¹ Tr. Vol. I 87:1-88:2 (George).

²⁵² CP Exh. 6; Tr. Vol. I 71:25-19 (George).

²⁵³ Tr. Vol. I 75:2-7 (George).

²⁵⁴ *International Longshoremen's & Warehousemen's Union, Local 50 (Brady-Hamilton Stevedore Co.)* (1976) 223 NLRB 1034.

that only the carpenters, and particularly, only journeymen carpenters, have the requisite skills, training, and experience to perform the installation of the LED ceiling panels in light of their direct, on-the-job training with the manufacturer of the LED ceiling panels, their consistent experience and expertise in installing integrated ceiling systems, and the fact that electricians have bungled this installation work in the past.

As explained by George, not only is the installation of LED ceiling panels squarely within the wheelhouse of carpenters, but because of the sensitive nature of the installation work and the potential to lose thousands of dollars if even one person touches the face of one of the LED ceiling panels on just one occasion, George believes that the only individuals capable of successfully and routinely installing LED ceiling panels are *skilled*, journeymen carpenters.²⁵⁵ The LED ceiling panels at issue are incredibly expensive, running \$40-50 per square foot, so a single error can result in tens of thousands of dollars in damage.²⁵⁶ Because of the substantial risks involved in the installation process, George does not recommend or use even apprentice carpenters to perform the disputed installation work.²⁵⁷

Skilled carpenters are particularly required to perform the installation work because of the number of problems that can cause the LED ceiling panels to fail or err.²⁵⁸ Skilled carpenters, as opposed to electricians and even apprentice carpenters, have the training, skills, and sufficient experience to reliably and hermetically seal the plenum which protects the LED ceiling panels from failure.²⁵⁹ If the plenum is not sealed from all dust and light, the LED ceiling panels can be compromised because even dust can short-circuit the LED lights.²⁶⁰ Non-

²⁵⁵ Tr. Vol. I 58:21-60:1 (George); Tr. Vol. I 44:10-23 (George).

²⁵⁶ Tr. Vol. I 58:21-60:1 (George).

²⁵⁷ Tr. Vol. I 58:21-60:1 (George).

²⁵⁸ Tr. Vol. I 58:21-60:1 (George).

²⁵⁹ Tr. Vol. I 59:19-60:13 (George).

²⁶⁰ Tr. Vol. I 59:19-60:13 (George).

carpenters simply do not have the skills necessary to ensure that the plenum is sealed, such as performing meticulous trim work, which is critical to the success of the installation.²⁶¹

Nunes, in his experience representing construction employers in Northern California, including many who are signatory to the CMANC, explained that carpenters are uniquely suited to install ceiling systems, including LED ceiling panels, because: (1) they are trained on how to install ceiling systems throughout their careers; (2) it has historically been their craft; and (3) it has always been within carpenters' scope of work.²⁶² Because it is within carpenters' scope of work, they are consistently performing ceiling installations, and they are therefore better at performing the work and more knowledgeable of developments in the industry, such as the advent of the LED ceiling panels in dispute in the present matter.²⁶³

In addition to having the requisite skills and experience necessary to reliably and consistently perform high-quality installation of LED ceiling panels, carpenters – including those on the AC-2 Project – have undergone special training to install low-voltage LED ceiling panels.²⁶⁴ For example, GFE's carpenters have been trained by KiboWorks *and* CoolEdge, both manufacturers of LED ceiling panels, including the manufacturer of the panels at issue in the instant matter, on the installation of LED ceiling panels.²⁶⁵ GFE's carpenters trained with a representative of CoolEdge, as well as a Richter representative, in March, 2017, to become experts on the process of installing the CoolEdge M-13 LED plug-and-play ceiling panels into the integrated Richter ceiling system.²⁶⁶ The Carpenters Union's International Training Center in Las Vegas, Nevada, along with its regional training centers, specifically trains – and has

²⁶¹ Tr. Vol. I 59:19-60:13 (George); Tr. Vol. I 44:10-23 (George).

²⁶² Tr. Vol. I 184:18-185:9 (Nunes).

²⁶³ Tr. Vol. I 190:15-25 (Nunes).

²⁶⁴ Tr. Vol. I 61:24-6 (George).

²⁶⁵ Tr. Vol. I 62:3-12 (George); Tr. Vol. I 133:20-135:17 (Dodds); Tr. Vol. I 137:7-10 (Dodds).

²⁶⁶ Tr. Vol. I 133:20-135:17 (Dodds); Tr. Vol. I 137:7-10 (Dodds).

trained – carpenters on how to install LED ceiling panels, including the Armstrong Ceiling System, which, like the CoolEdge ceiling panels, includes a low-voltage LED plug-and-play panel that can be installed into a ceiling system.²⁶⁷

Particularly because the instruction manuals include with the LED ceiling panels are “rudimentary” in that they gloss over a number of issues that can cause the LED ceiling panels to fail – e.g., instruction not to touch the white face of the LED ceiling panels, the experience, training, and skill of the carpenters make carpenters all the more qualified to perform the installation of the LED ceiling panels in comparison to the IBEW electricians.²⁶⁸ As noted by George, electricians “are not trained specifically to do that kind of work that was being required” – “that work” being the installation of LED ceiling panels.²⁶⁹

In one instance exemplifying why carpenters are preferable to electricians in performing the installation of LED ceiling panels, at a construction project on 222 2nd Street, San Francisco, California, GFE’s carpenters were called in and required to assist with CoolEdge LED ceiling panels that electricians had failed to properly install.²⁷⁰ In fact, when GFE’s carpenters arrived, they found the LED ceiling systems detached from the ceiling and laying around in the ceiling system.²⁷¹ GFE found that the electricians had improperly glued the light fixtures to the ceiling and violated the applicable building code by screwing the panels into drywall, which caused the light panels to fall.²⁷² Moreover, the electricians failed to be properly seal the plenum.²⁷³

Ultimately, as explained by Nunes, installing ceilings is a carpenter craft, and it is has been a decades-long specialty of carpenters, who are trained in installing integrated ceiling

²⁶⁷ Tr. Vol. I 186:1-10 (Nunes); Tr. Vol. I 185:10- 186:10 (Nunes).

²⁶⁸ Tr. Vol. I 62:15-63:6 (George); Tr. Vol. I 63:22-64:13 (George).

²⁶⁹ Tr. Vol. I 71:1-17 (George).

²⁷⁰ Tr. Vol. I 65:11-68:17 (George); Tr. Vol. I 69:9-14 (George).

²⁷¹ Tr. Vol. I 65:11-68:17 (George); Tr. Vol. I 69:9-14 (George).

²⁷² Tr. Vol. I 65:11-68:17 (George); Tr. Vol. I 69:9-14 (George).

²⁷³ Tr. Vol. I 65:11-68:17 (George); Tr. Vol. I 69:9-14 (George).

systems through apprenticeship programs, journeymen programs, and journeymen-upgrade programs.²⁷⁴ In light of their specialty training, skills, and consistent experience in handling these delicate and high-risk/high-cost LED ceiling panels, there is no question that carpenters should be assigned this installation work over electricians.

E. Having Carpenters Perform The Disputed Installation Work Is Significantly More Efficient And Cost-Effective Than Assigning This Work To The Electricians.

The Board also considers the relative economy and efficiency of the competing groups of workers when deciding which group should be assigned the disputed work.²⁷⁵ This factor, for the below reasons, strongly favors assigning the disputed work to the Carpenters Union members.

As explained by Nunes, having electricians perform even just the plug-and-play aspect of the LED ceiling panel installation would be problematic because the electricians and carpenters would have to be standing by one another to ensure that there is no further work necessary to be done in the event that an electrician moved any materials out of place while performing the plug-and-play work.²⁷⁶ He testified that it is also more efficient to have a single crew perform the entirety of the installation work, as opposed to using different craftsmen, who would have to individually climb up and down the ladder to ensure that the installation is performed correctly.²⁷⁷ As a result, using a composite crew of electricians and laborers would be more labor intensive, less efficient, and therefore more costly than just using a single craft –i.e., the carpenters – to install the LED ceiling panels.²⁷⁸

In light of the foregoing, considerations of both cost and efficiency favor assigning the

²⁷⁴ Tr. Vol. I 184:9-17 (Nunes).

²⁷⁵ See *Newspaper & Mail Deliverers' Union (New York News, Inc.)* (1984) 270 NLRB 307.

²⁷⁶ Tr. Vol. I 189:2-24 (Nunes).

²⁷⁷ Tr. Vol. I 189:20-190:10 (Nunes).

²⁷⁸ Tr. Vol. I 191:1-9 (Nunes).

entirety of the LED ceiling panel installation work to members of the Carpenters Union over the IBEW electricians.

F. Other Factors Favor Awarding The Disputed Work To The Carpenters.

The NLRB also considers a variety of other factors, all of which cut in favor of the Board affirming R&S's decision to award the work to members of the Carpenters Union. Specifically:

- There is no evidence in the record that R&S's or GFE's assignment of the disputed work conflicts with any Board certification.
- There is no evidence of any arbitration or grievance awards between the parties involved in this matter which awarded the disputed work to the IBEW electricians.
- There is also no agreed-upon method of resolving work jurisdiction disputes on site.

In summation, all of the various factors that the NLRB considers in resolving work assignment disputes strongly favor awarding the work to members of the Carpenters Union. For over 40 years, carpenters have been consistently and successfully performing the installation of integrated ceiling systems. Carpenters have been trained specifically to install the CoolEdge LED ceiling panels and have the skills and experience necessary to reliably and aptly install those panels. For these reasons, in addition to the parties' consistent past practice, it is unsurprising that Apple, R&S, and GFE would agree that the work in dispute should be awarded to members of the Carpenters Union.

V. CONCLUSION

Rudolph & Sletten's assignment of the disputed work in this matter to members of the Carpenters Union, individuals who have been performing integrated ceiling installations for decades and who have successfully and consistently installed LED ceiling panels since their

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inception, should be affirmed. There is no basis in Board law or precedent for disturbing R&S's work assignment. In addition, the IBEW's proclivity for engaging in unlawful activity in pursuit of its raid on carpenters' assigned work should result in a broad award to all of R&S's and GFE's future projects in Northern California. Such an award is the only way to deter the IBEW from engaging in further unlawful conduct at other construction projects.

Dated: June 27, 2017

Respectfully submitted,

LITTLER MENDELSON, P.C.

By:  _____

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Attorneys for Involved Party Employer
GEORGE FAMILY ENTERPRISES

1 PROOF OF SERVICE BY MAIL

2 I am employed in San Francisco County, California. I am over the age of eighteen
3 years and not a party to the within-entitled action. My business address is 333 Bush Street, 34th
4 Floor, San Francisco, California 94104. I am readily familiar with this firm's practice for collection
5 and processing of correspondence for mailing with the United States Postal Service. On June 27,
6 2017, I placed with this firm at the above address for deposit with the United States Postal Service a
7 true and correct copy of the within document(s):

8 CHARGING PARTY RUDOLPH AND SLETTENS POST-
9 HEARING BRIEF

10 in a sealed envelope, postage fully paid, addressed as follows:

11 *Christopher E. Platten*
12 *Wylie, McBride, Platten & Renner*
13 *2125 Canoas Garden Avenue, Suite 120*
14 *San Jose, CA 94125*

15 *Matthew Gauger*
16 *Weinberg Roger & Rosenfeld*
17 *1001 Marina Village Parkway, Suite 200*
18 *Alameda, CA 94501-1091*

19 *D. Criss Parker*
20 *Hearing Officer*
21 *National Labor Relations Board, Region 32*
22 *1301 Clay Street, Suite 300N*
23 *Oakland, CA 94612*

24 Following ordinary business practices, the envelope was sealed and placed for
25 collection and mailing on this date, and would, in the ordinary course of business, be deposited with
26 the United States Postal Service on this date.

27 I declare that I am employed in the office of a member of the bar of this court at
28 whose direction the service was made.

Executed on June 27, 2017, at San Francisco, California.

Susan A. Becerra

Susan A. Becerra